

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1055

Heard at Montreal, Tuesday, April 12th, 1983

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED

and

BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES

DISPUTE:

The Company violated articles 15.2 and 35.5 of the collective agreement.

JOINT STATEMENT OF ISSUE:

On July 16, 1982 the position held by Mr. R. Epp was abolished. Mr. R. Epp advised his desire to displace a junior employee, Mr. L. Rush, as second driver on a sleeper team. Mr. Howard the senior driver on the team refused to accept Mr. Epp as a partner.

The Company supported Mr. Howard's position.

FOR THE UNION:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) N. W. FOSBERY
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

N. W. Fosbery – Director, Labour Relations, Willowdale.

And on behalf of the Brotherhood:

R. Welch – System General Chairman, Vancouver

M. Krystofiak – Vice-General Chairman, Calgary

AWARD OF THE ARBITRATOR

When Mr. Epp's position was abolished he was entitled, and indeed required, to exercise his seniority in accordance with article 15.2 of the collective agreement. That article is as follows:-

15.2 An employee whose position is abolished or who is displaced from his bulletined position must displace, within three working days, a full time junior employee in his local seniority group for whose position he is qualified. Failure to comply with said time limit shall result in the employee's name being removed from the seniority list unless satisfactory reason is given to the appropriate Company Officer.

The Local Chairman and Vice General Chairman will be given advice of employees exercising seniority and the positions involved.

The grievor sought to exercise this right by displacing a particular junior employee who was second driver on a sleeper team. The senior driver would not accept the grievor. The grievor was subsequently chosen by another senior driver, and a new team was formed. There was in fact no overall reduction in staff, the grievor did exercise seniority in the driver group, and it would appear did not suffer any loss of earnings. It is alleged that article 15.2 was violated in that the grievor was not allowed to displace the junior employee of his choice.

The exercise of the grievor's right of displacement must be considered in the light of article 35.5, which is as follows:

35.5 Once driver teams are established, it is understood that they are not to be separated unless mutually agreed to by the Company, the Union and the driver team involved, except in case of emergency or reduction in forces, or temporary training.

The effect of the grievor's claim was to seek the separation of a driver team, where there was no mutual agreement. This would be possible only if there were an emergency, a reduction in forces, or an instance of temporary training. There was no emergency or temporary training involved here. Neither, in my view, was there a "reduction in forces". The grievor could be accommodated in the driver group, and no layoff was necessary. If there had been, then the grievor might have been forced on a senior driver as second man, but even then it would not necessarily follow that he could displace the junior employee of his choice. He was entitled to the position of "a junior employee", and he did exercise his seniority into the appropriate group. In these circumstances, there was no violation of the collective agreement.

(signed) J. F. W. WEATHERILL
ARBITRATOR